

Executive Summary – Enforcement Matter – Case No. 46293
CENTERGAS FUELS, INC.
RN102060159
Docket No. 2013-0396-PST-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Centergas Fuels, 5901 North Western Street, Amarillo, Potter County delivered fuel to 11250 West Lake Road, Abilene, Jones County.

Type of Operation:

Common Carrier

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: August 16, 2013

Comments Received: No

Penalty Information

Total Penalty Assessed: \$9,109

Amount Deferred for Expedited Settlement: \$1,821

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$318

Total Due to General Revenue: \$6,970

Payment Plan: 22 payments of \$302 each and 1 payment of \$326

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - High

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2011

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Docket No. 2013-0396-PST-E

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: January 24, 2013
Date(s) of NOE(s): February 8, 2013

Violation Information

Failed to verify that the owner or operator of an underground storage tank (“UST”) system possessed a valid, current TCEQ delivery certificate prior to depositing a regulated substance into the UST system. Specifically, the Respondent made 16 fuel drops at the Facility between May 12, 2012 and January 3, 2013 [30 TEX. ADMIN. CODE § 334.5(b)(1)(A)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

On March 11, 2013, Respondent established and implemented procedures designed to ensure that a facility possesses a valid, current TCEQ delivery certificate prior to depositing a regulated substance into the UST system.

Technical Requirements:

N/A

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: John Fennell, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-2616; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456
TCEQ SEP Coordinator: N/A
Respondent: Larry J. Taylor, President, CENTERGAS FUELS, INC., P.O. Box 15000, Amarillo, Texas 79105
Respondent's Attorney: Donald H. Grissom, Attorney, Grissom & Thompson, L.L.P., 609 West 10th Street, Austin, Texas 78701-2023



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES

Assigned

11-Feb-2013

PCW

5-Jun-2013

Screening

20-Feb-2013

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent CENTERGAS FUELS, INC.

Reg. Ent. Ref. No. RN102060159

Facility/Site Region 1-Amarillo

Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No. 46293

Docket No. 2013-0396-PST-E

Media Program(s) Petroleum Storage Tank

Multi-Media

No. of Violations 1

Order Type 1660

Government/Non-Profit No

Enf. Coordinator John Fennell

EC's Team Enforcement Team 7

Admin. Penalty \$ Limit Minimum

\$0

Maximum

\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$10,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History

0.0%

Enhancement

Subtotals 2, 3, & 7 \$0

Notes

No adjustment for compliance history.

Culpability

No

0.0%

Enhancement

Subtotal 4 \$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments

Subtotal 5 \$1,000

Economic Benefit

Total EB Amounts

\$109

Approx. Cost of Compliance

\$100

0.0% Enhancement*

*Capped at the Total EB \$ Amount

Subtotal 6 \$0

SUM OF SUBTOTALS 1-7

Final Subtotal \$9,000

OTHER FACTORS AS JUSTICE MAY REQUIRE

1.2%

Adjustment \$109

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Recommended enhancement to capture the avoided cost of compliance associated with the violation.

Final Penalty Amount \$9,109

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$9,109

DEFERRAL

20.0%

Reduction

Adjustment -\$1,821

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

\$7,288

Screening Date 20-Feb-2013

Docket No. 2013-0396-PST-E

PCW

Respondent CENTERGAS FUELS, INC.

Policy Revision 3 (September 2011)

Case ID No. 46293

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102060159

Media [Statute] Petroleum Storage Tank

Enf. Coordinator John Fennell

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 0%

Screening Date 20-Feb-2013

Docket No. 2013-0396-PST-E

PCW

Respondent CENTERGAS FUELS, INC.

Policy Revision 3 (September 2011)

Case ID No. 46293

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102060159

Media [Statute] Petroleum Storage Tank

Enf. Coordinator John Fennell

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.5(b)(1)(A)

Violation Description Failed to verify that the owner or operator of an underground storage tank ("UST") system possessed a valid, current TCEQ delivery certificate prior to depositing a regulated substance into the UST system. Specifically, the Respondent made 16 fuel drops at the Facility between May 12, 2012 and January 3, 2013.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 8

236 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$10,000

Eight monthly events are recommended based on documentation of the violation from May 12, 2012 through January 3, 2013.

Good Faith Efforts to Comply

10.0% Reduction

\$1,000

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		x
N/A		(mark with x)

Notes

The Respondent came into compliance on March 11, 2013, prior to the initial settlement offer dated April 4, 2013.

Violation Subtotal \$9,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$109

Violation Final Penalty Total \$9,109

This violation Final Assessed Penalty (adjusted for limits) \$9,109

Economic Benefit Worksheet

Respondent CENTERGAS FUELS, INC.

Case ID No. 46293

Reg. Ent. Reference No. RN102060159

Media Petroleum Storage Tank

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	24-Jan-2013	11-Mar-2013	0.13	\$1	n/a	\$1

Notes for DELAYED costs

Estimated delayed cost to establish and implement procedures designed to ensure that a Facility possesses a valid, current fuel delivery certificate. The date required is the investigation date, and the final date is the compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	12-May-2012	11-Mar-2013	1.75	\$9	\$100	\$109
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for the Respondent to verify the Facility had a current valid fuel delivery certificate. The date required is the first delivery date, and the final date is the compliance date.

Approx. Cost of Compliance

\$200

TOTAL

\$109



Compliance History Report

PUBLISHED Compliance History Report for CN602594319, RN102060159, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator: CN602594319, CENTERGAS FUELS, INC. **Classification:** SATISFACTORY **Rating:** 10.00

Regulated Entity: RN102060159, Centergas Fuels **Classification:** HIGH **Rating:** 0.00

Complexity Points: 3 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 5901 N WESTERN ST AMARILLO, TX 79124-5838, POTTER COUNTY

TCEQ Region: REGION 01 - AMARILLO

ID Number(s):

PETROLEUM STORAGE TANK REGISTRATION

REGISTRATION 27190

Compliance History Period: September 01, 2007 to August 31, 2012 **Rating Year:** 2012 **Rating Date:** 09/01/2012

Date Compliance History Report Prepared: February 20, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: February 20, 2008 to February 20, 2013

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Herbert Darling **Phone** (512) 239-2570

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If YES for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

Item 1	June 29, 2009	(759435)
Item 2	August 22, 2012	(1023254)

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CENTERGAS FUELS, INC.
RN102060159**

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§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2013-0396-PST-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding CENTERGAS FUELS, INC. ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent, represented by Donald H. Grissom of the law firm of Grissom & Thompson, L.L.P., together stipulate that:

1. The Respondent, a common carrier, located at 5901 North Western Street in Amarillo, Potter County, Texas, delivered fuel to Big Country Bait Grocery and Café, a retail gasoline facility with underground storage tanks ("USTs"), located at 11250 West Lake Road in Abilene, Jones County, Texas (the "Facility").
2. The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about February 13, 2013.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Nine Thousand One Hundred Nine Dollars (\$9,109) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Three Hundred Eighteen Dollars (\$318) of the administrative penalty and One Thousand Eight Hundred Twenty-One Dollars (\$1,821) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Six Thousand Nine Hundred Seventy Dollars (\$6,970) of the administrative penalty shall be payable in 22 monthly payments of Three Hundred Two Dollars (\$302) each and 1 payment of Three Hundred Twenty-Six Dollars (\$326). The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that on March 11, 2013, the Respondent established and implemented procedures designed to ensure that a facility possesses a valid, current TCEQ delivery certificate prior to depositing a regulated substance into the UST system.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As a common carrier, the Respondent is alleged to have failed to verify that the owner or operator of an UST system possessed a valid, current TCEQ delivery certificate prior to depositing a regulated substance into the UST system, in violation of 30 TEX. ADMIN. CODE § 334.5(b)(1)(A), as documented during an investigation conducted on January 24, 2013. Specifically, the Respondent made 16 fuel drops at the Facility between May 12, 2012 and January 3, 2013.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: CENTERGAS FUELS, INC., Docket No. 2013-0396-PST-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the operations referenced in this Agreed Order.
3. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director.

The determination of what constitutes good cause rests solely with the Executive Director.

5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

10/21/13
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

6-13-13
Date

Larry J Taylor
Name (Printed or typed)
Authorized Representative of
CENTERGAS FUELS, INC.

President
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.